

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

KEVIN LEE WEBER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-05-1215-F
	)	
DON STEWART, Warden,	)	
CIMARRON CORRECTIONAL	)	
FACILITY,	)	
	)	
Respondent.	)	

**Report and Recommendation**

The present action involves a petition for a writ of habeas corpus. This action should be transferred to the Northern District of Oklahoma.

The Petitioner is challenging a conviction imposed in Tulsa County District Court, which is located in the Northern District of Oklahoma. *See* 28 U.S.C. § 116(a). The Petitioner is incarcerated at the Cimarron Correctional Facility, which is located in the Western District of Oklahoma. *See* 28 U.S.C. § 116(c). Under these circumstances, the Northern and Western districts have concurrent jurisdiction over the habeas petition. *See* 28 U.S.C. § 2241(d). However, this Court has discretion to transfer the action to the Northern District of Oklahoma for hearing and determination. *See id.*

The Court should exercise this discretion and transfer the action to the Northern District of Oklahoma. For a habeas petition which challenges the conviction, this district and the Northern District of Oklahoma share the view that adjudication should ordinarily take place in the district where the conviction was obtained. This view is based, in part, on the

belief that ordinarily the trial records and counsel will be available in the district where the prosecution took place. Under these circumstances, the undersigned recommends transfer of the action to the Northern District of Oklahoma.

Recommendation and Notice of Right to Object

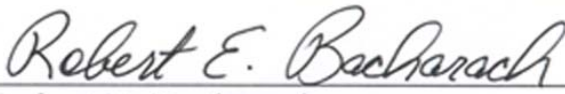
For the reasons stated above, the undersigned recommends transfer to the United States District Court for the Northern District of Oklahoma. The parties are advised of their right to object to this report and recommendation by November 15, 2005. *See* 28 U.S.C. § 636(b); W.D. Okla. LCvR 72.1(a). Any such objection must be filed with the Court Clerk for the United States District Court, Western District of Oklahoma. Failure to timely object would waive Mr. Weber's right to challenge the transfer in a subsequent appeal. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The undersigned directs the Court Clerk to send the report and recommendation to the Petitioner and the Attorney General of Oklahoma. The copy for the Attorney General of Oklahoma is for informational purposes only.

Status of the Referral

This report and recommendation disposes of all matters referred to the undersigned in the present action.

Entered this 26th day of October, 2005.

  
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Robert E. Bacharach  
United States Magistrate Judge